

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NEMAN BROTHERS & ASSOC.,
INC., a California Corporation;

Plaintiff,

vs.

MARSONS INTERNATIONAL, INC.
d/b/a RACHAEL AND CHLOE, a
California Corporation; THE TJX
COMPANIES, INC., d/b/a T.J. MAXX,
a Massachusetts Corporation; and
DOES 1 through 10, inclusive, 1-10,
inclusive,

.

Defendants.

Case No.: 2:16-cv-01634-DMG-AJW

**STIPULATED
PROTECTIVE ORDER**

Hon. Dolly M. Gee, Judge
Presiding

1 On stipulation of the Parties, the Court enters a Protective Order in this
2 matter as follows:

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4 1. PURPOSES AND LIMITATIONS

5 Disclosure and discovery activity in this action are likely to involve
6 production of confidential, proprietary, or private information for which special
7 protection from public disclosure and from use for any purpose other than
8 prosecuting this matter would be warranted. Accordingly, the parties have
9 stipulated to and petitioned this Court to enter the following Stipulated Protective
10 Order. The parties acknowledge that this Order does not confer blanket protections
11 on all disclosures or responses to discovery and that the protection it affords
12 extends only to the limited information or items that are entitled under the
13 applicable legal principles to treatment as confidential. The parties have agreed
14 that the terms of this Protective Order shall also apply to any future voluntary
15 disclosures of confidential, proprietary, or private information. The parties reserve
16 their rights to object to or withhold any information, including confidential,
17 proprietary, or private information, on any other applicable grounds permitted by
18 law, including third-party rights and relevancy.

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20 2. DEFINITIONS

21 2.1 Party: any party to this action, including all of its officers,
22 directors, employees, consultants, retained experts, and outside counsel (and their
23 support staff).

24 2.2 Disclosure or Discovery Material: all items or information,
25 regardless of the medium or manner generated, stored, or maintained (including,
26 among other things, testimony, transcripts, or tangible things), that are produced or
27 generated in disclosures or responses to discovery in this matter.

1 2.3 “Confidential” Information or Items: All information in
2 whatever form, such as oral, written, documentary, tangible, intangible, electronic,
3 or digitized now or hereafter in existence that:

4 a) derives independent economic value, actual or potential, from
5 not being generally known to, and not being readily ascertainable by proper means,
6 by other persons who can obtain economic value from its disclosure or use;

7 b) is the subject of efforts that are reasonable under the
8 circumstances to maintain its secrecy; and

9 c) is otherwise regarded by a party as being confidential,
10 private, or proprietary in nature.

11 2.4 “Attorneys’ Eyes Only”: Discovery Material or such portion of
12 such material that the disclosing party has a reasonable belief that the information
13 disclosed, if known to one or more parties in the case would have a reasonable
14 chance of putting the disclosing party to a competitive disadvantage or otherwise
15 result in the disclosure of sensitive proprietary information that could cause future
16 harm. Notwithstanding the terms of this agreement, Plaintiff’s attorney is entitled
17 to disclose to Plaintiff the total revenue and gross profit data disclosed in this
18 action, as well as the names of any parties responsible for distributing the
19 infringing product at issue, or any components of said product.

20 2.5 Receiving Party: a Party that receives Disclosure or Discovery
21 Material from a Producing Party.

22 2.6 Producing Party: a Party or non-party that produces Disclosure
23 or Discovery Material in this action.

24 2.7 Designating Party: a Party or non-party that designates
25 information or items that it produces in disclosures or in responses to discovery as
26 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

27 2.8 Protected Material: any Disclosure or Discovery Material that
28 is designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

1 2.9 Expert: a person with specialized knowledge or experience in a
2 matter pertinent to the litigation who has been retained by a Party or its counsel to
3 serve as an expert witness or as a consultant in this action. This definition includes
4 a professional jury or trial consultant retained in connection with this litigation.
5 The expert witness or consultant may not be a past or a current employee of the
6 Party (including any affiliates or related entities) adverse to the Party engaging the
7 expert witness or consultant, or someone who at the time of retention is anticipated
8 to become an employee of the Party (including any affiliates or related entities)
9 adverse to the Party engaging the expert witness or consultant.

10 2.10 Professional Vendors: persons or entities that provide litigation
11 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
12 demonstrations; organizing, storing, or retrieving data in any form or medium; etc.)
13 and their employees and subcontractors.

14

15 3. SCOPE

16 The protections conferred by this Stipulation and Order cover not only
17 Protected Material (as defined above), but also any information copied or extracted
18 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
19 testimony, conversations, or presentations by parties or counsel to or in litigation or
20 in other settings that might reveal Protected Material.

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22 4. DURATION

23 Even after the termination of this action, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees
25 otherwise in writing or a court order otherwise directs.

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1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for
3 Protection. Each Party or non-party that designates information or items for
4 protection under this Order must take care to limit any such designation to specific
5 material that qualifies under the appropriate standards. A Designating Party must
6 take care to designate for protection only those parts of material, documents, items,
7 or oral or written communications that qualify – so that other portions of the
8 material, documents, items, or communications for which protection is not
9 warranted are not swept unjustifiably within the ambit of this Order.

10 5.2 Manner and Timing of Designations. Except as otherwise
11 provided in this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as
12 otherwise stipulated or ordered, material that qualifies for protection under this
13 Order must be clearly so designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (apart from
16 transcripts of depositions or other pretrial or trial proceedings), that the Producing
17 Party affix the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” at
18 the top or bottom of each page that contains protected material.

19 A Party or non-party that makes originals or copies of
20 documents or materials available for inspection need not designate them for
21 protection until after the inspecting Party has indicated which material it intends to
22 copy. During the inspection and before the designation, all of the material made
23 available for inspection shall be deemed “ATTORNEYS’ EYES ONLY.” After
24 the inspecting Party has identified the documents it wants copied and produced, the
25 Producing Party must designate, either in writing or on the record (at a deposition),
26 which documents, or portions thereof, qualify for protection under this Order.
27 Then the Receiving Party must affix the “CONFIDENTIAL” or “ATTORNEYS’
28 EYES ONLY” legend at the top of each copied page that contains Protected

1 Material. If only a portion or portions of the material on a page qualifies for
2 protection, the Producing Party also must clearly identify the protected portion(s)
3 (e.g., by making appropriate markings in the margins) and must specify, for each
4 portion, the level of protection being asserted (either “CONFIDENTIAL” or
5 “ATTORNEYS’ EYES ONLY”).

6 (b) for testimony given in deposition or in other pretrial or
7 trial proceedings, that the Party or non-party offering or sponsoring the testimony
8 identify on the record, before the close of the deposition, hearing, or other
9 proceeding, all protected testimony, and further specify any portions of the
10 testimony that qualify as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”
11 When it is impractical to identify separately each portion of testimony that is
12 entitled to protection, and when it appears that substantial portions of the testimony
13 may qualify for protection, the Party or non-party that sponsors, offers, or gives the
14 testimony may invoke on the record (before the deposition or proceeding is
15 concluded) a right to have up to 20 days to identify the specific portions of the
16 testimony as to which protection is sought and to specify the level of protection
17 being asserted (“CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”). Only
18 those portions of the testimony that are appropriately designated for protection
19 within the 20 days shall be covered by the provisions of this Stipulated Protective
20 Order.

21 Transcript pages containing Protected Material must be
22 separately bound by the court reporter, who must affix to the top of each such page
23 the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” as instructed
24 by the Party or non-party offering or sponsoring the witness or presenting the
25 testimony.

26 (c) for information produced in some form other than
27 documentary, and for any other tangible items, that the Producing Party affix in a
28 prominent place on the exterior of the container or containers in which the

1 information or item is stored the legend “CONFIDENTIAL” or “ATTORNEYS’
2 EYES ONLY.” If only portions of the information or item warrant protection, the
3 Producing Party, to the extent practicable, shall identify the protected portions,
4 specifying whether they qualify as “CONFIDENTIAL” or as “ATTORNEYS’
5 EYES ONLY.”

6 5.3 Inadvertent Failures to Designate. If timely corrected, an
7 inadvertent failure to designate qualified information or items as
8 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” does not, standing alone,
9 waive the Designating Party’s right to secure protection under this Order for such
10 material. If material is appropriately designated as “CONFIDENTIAL” or
11 “ATTORNEYS’ EYES ONLY” after the material was initially produced, the
12 Receiving Party, on timely notification of the designation, must make reasonable
13 efforts to assure that the material is treated in accordance with the provisions of this
14 Order.

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16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS
17 6.1 Timing of Challenges. Unless a prompt challenge to a
18 Designating Party’s confidentiality designation is necessary to avoid foreseeable
19 substantial unfairness, unnecessary economic burdens, or a later significant
20 disruption or delay of the litigation, a Party does not waive its right to challenge a
21 confidentiality designation by electing not to mount a challenge promptly after the
22 original designation is disclosed.

23 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
24 Designating Party’s confidentiality designation must do so in good faith and must
25 begin the process by conferring with counsel for the Designating Party in writing.
26 In conferring, the challenging Party must explain the basis for its belief that the
27 confidentiality designation was not proper and must give the Designating Party an
28 opportunity to review the designated material, to reconsider the circumstances, and,

1 if no change in designation is offered, to explain the basis for the chosen
2 designation. A challenging Party may proceed to the next stage of the challenge
3 process only if it has engaged in this meet-and-confer process first.

4 6.3 Court Intervention. A Party that elects to press a challenge to a
5 confidentiality designation after considering the justification offered by the
6 Designating Party may file and serve a motion that identifies the challenged
7 material and sets forth in detail the basis for the challenge. Each such motion must
8 be accompanied by a competent declaration that affirms that the movant has
9 complied with the meet-and-confer requirements imposed in the preceding
10 paragraph and that sets forth with specificity the justification for the confidentiality
11 designation that was given by the Designating Party in the meet-and-confer
12 dialogue. The parties agree that a confidentiality designation shall not create a
13 presumption in favor of such confidentiality designation, and that the Court shall
14 decide the issue as such.

15 Until the Court rules on the challenge, all parties shall continue to
16 afford the material in question the level of protection to which it is entitled under
17 the Producing Party's designation.

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19 7. ACCESS TO AND USE OF PROTECTED MATERIAL
20 7.1 Basic Principles. A Receiving Party may use Protected
21 Material that is disclosed or produced by another Party or by a non-party in
22 connection with this case only for prosecuting, defending, or attempting to settle
23 this litigation. Such Protected Material may be disclosed only to the categories of
24 persons and under the conditions described in this Order. When the litigation has
25 been terminated, a Receiving Party must comply with the provisions of section 11,
26 below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving
2 Party at a location and in a secure manner that ensures that access is limited to the
3 persons authorized under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items

5 Unless otherwise ordered by the Court or permitted in writing by the Designating
6 Party, a Receiving Party may disclose any information or item designated
7 “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s outside counsel, as well as
9 employees of said outside counsel to whom it is reasonably necessary to disclose
10 the information for this litigation;

11 (b) Board members, officers and directors of the Receiving
12 Party;

13 (c) Other employees of the Receiving Party to whom
14 disclosure is reasonably necessary for this litigation and who are bound by internal
15 confidentiality obligations as part of their employment or who have signed the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (d) Experts (as defined in this Order) of the Receiving Party
18 to whom disclosure is reasonably necessary for this litigation and who have signed
19 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (e) the Court personnel assigned to this litigation;

21 (f) court reporters, their staffs, and professional vendors to
22 whom disclosure is reasonably necessary for this litigation and who have signed
23 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (g) during their depositions, witnesses in the action to whom
25 disclosure is reasonably necessary and who have signed the “Acknowledgment and
26 Agreement to Be Bound” (Exhibit A). Pages of transcribed deposition testimony
27 or exhibits to depositions that reveal Protected Material must be separately bound

1 by the court reporter and may not be disclosed to anyone except as permitted under
2 this Stipulated Protective Order; and

3 (h) the author of the document or the original source of the
4 information.

5 **7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or**
6 **Items.** Unless otherwise ordered by the Court or permitted in writing by the
7 Designating Party, a Receiving Party may disclose any information or item
8 designated “ATTORNEYS’ EYES ONLY” only to:

9 (a) the Receiving Party’s outside counsel, as well as
10 employees of said outside counsel to whom it is reasonably necessary to disclose
11 the information for this litigation;

12 (b) Experts (as defined in this Order) of the Receiving Party
13 to whom disclosure is reasonably necessary for this litigation and who have signed
14 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (c) the Court personnel assigned to this litigation;

16 (d) court reporters, their staffs, and professional vendors to
17 whom disclosure is reasonably necessary for this litigation and who have signed
18 the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

19 (e) the author of the document or the original source of the
20 information.

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22 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
PRODUCED IN OTHER LITIGATION

23 If a Receiving Party is served with a subpoena or an order issued in other
24 litigation that would compel disclosure of any Discovery Material, the Receiving
25 Party must so notify the Designating Party, in writing immediately and in no event
26 more than five business days after receiving the subpoena or order. Such
27 notification must include a copy of the subpoena or court order. The Receiving
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1 Party also must immediately inform in writing the Party who caused the subpoena
2 or order to issue in the other litigation that some or all of the material covered by
3 the subpoena or order is the subject of this Protective Order. In addition, the
4 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to
5 the Party in the other action that caused the subpoena or order to issue.

6 The purpose of imposing these duties is to alert the interested parties to the
7 existence of this Protective Order and to afford the Designating Party in this case
8 an opportunity to try to protect its confidentiality interests in the court from which
9 the subpoena or order issued.

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11 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a Receiving Party learns that, by inadvertence or otherwise, it has
13 disclosed Protected Material to any person or in any circumstance not authorized
14 under this Stipulated Protective Order, the Receiving Party must immediately (a)
15 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
16 best efforts to retrieve all copies of the Protected Material, (c) inform the person or
17 persons to whom unauthorized disclosures were made of all the terms of this Order,
18 and (d) request such person or persons to execute the "Acknowledgment and
19 Agreement to Be Bound" that is attached hereto as Exhibit A.

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21 10. FILING PROTECTED MATERIAL

22 Without written permission from the Designating Party, or a court order
23 secured after appropriate notice to all interested persons and after following the
24 procedures provided for in Local Rule 79-5.1, a Party may not file in the public
25 record in this action any Protected Material.

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27 11. FINAL DISPOSITION

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1 Unless otherwise ordered or agreed to in writing by the Producing Party,
2 within 60 days after the final termination of this action, each Receiving Party must
3 return all Protected Material to the Producing Party or destroy the Protected
4 Material. As used in this subdivision, “all Protected Material” includes all copies,
5 abstracts, compilations, summaries or any other form of reproducing or capturing
6 any of the Protected Material. Notwithstanding this provision, counsel are entitled
7 to retain an archival copy of all pleadings, motion papers, transcripts, legal
8 memoranda, correspondence or attorney work product, even if such materials
9 contain Protected Material. Any such archival copies that contain or constitute
10 Protected Material remain subject to this Protective Order as set forth in Section 4
11 (DURATION), above.

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13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right
15 of any person to seek its modification in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of
17 this Protective Order no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in
19 this Stipulated Protective Order. Similarly, no Party waives any right to object on
20 any ground to use in evidence of any of the material covered by this Protective
21 Order.

22 12.3 Inadvertent Production of Privileged Documents. If a Party,
23 through inadvertence, produces any document or information that it believes is
24 immune from discovery pursuant to an attorney-client privilege, the work product
25 privilege, or any other privilege, such production shall not be deemed a waiver of
26 any privilege, and the Producing Party may give written notice to the Receiving
27 Party that the document or information produced is deemed privileged and that
28 return of the document or information is requested. Upon receipt of such notice,

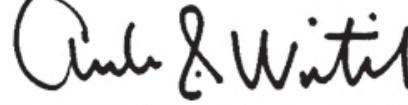
1 the Receiving Party shall immediately gather the original and all copies of the
2 document or information of which the Receiving Party is aware, in addition to any
3 abstracts, summaries, or descriptions thereof, and shall immediately return the
4 original and all such copies to the Producing Party. Nothing stated herein shall
5 preclude a Party from challenging an assertion by the other Party of privilege or
6 confidentiality.

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9 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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11 Dated: June 15, 2015

12 By: 
Honorable Magistrate Judge
Andrew J. Wistrich

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print full name], of _____ [print full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California in the case of *Neman Brothers & Assoc., Inc. v. MARSONS INTERNATIONAL, INC. d/b/a RACHAEL AND CHLOE, a California Corporation*; *THE TJX COMPANIES, INC., d/b/a T.J. MAXX, a Massachusetts Corporation* Case No. 2:16-cv-01634-DMG-AJW. I agree to comply with and to be bound by all of the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print full name] of _____ [print full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

27 | City and State where sworn and signed:

28 | Printed name:

1 Signature: _____
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